SBCivil Writ Petition No.6216/2003

Dr.Jagdish Singh Rajpurohit
Vs.
State of Rajasthan & Ors.

Date of Order :: 24th August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.P.Joshi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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As a consequence to initiation of disciplinary proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") the inquiry officer submitted inquiry report to the disciplinary authority on 30.1.2003. The inquiry officer exonerated the petitioner from all the three allegations levelled against him. The disciplinary authority being in disagreement with inquiry officer by a notice dated 6.5.2003 instructed the petitioner to submit an explanation as to why he be not removed from service as a disciplinary measure. The reasons for disagreement with the findings given by the inquiry officer were also supplied to the petitioner alongwith a copy of the inquiry report. The petitioner in pursuant thereto submitted a detailed explanation dated NIL, that is available on record as Anx.8. The disciplinary authority after considering the explanation submitted by the petitioner by an

order dated 4.5.2004 remanded the case for 'de-novo' inquiry on the count that the inquiry officer failed to record the statements of all the persons who were examined during preliminary inquiry.

Being aggrieved by order dated 4.5.2004 this petition for wit is preferred on the count that Rule 16(9) of the Rules of 1958 empowers disciplinary authority to remand the case for 'do-novo' inquiry if the inquiry is laconic but not to meet the negligence or lacuna left by prosecution or its presenting officer. In the present case the inquiry is ordered to be conducted 'do-novo' to fill up the lacunas of the prosecution by not producing the witnesses. To substantiate the contention reliance is placed by counsel for the petitioner upon a judgment of this Court in the case of Dr.O.P.Garg v. State of Rajasthan & Ors., reported in 2005(6) RDD 2195 (Raj), holding as under:-

> “12.Sub-rule(9) of Rule 16 of the Rules of 1958 provides that a case can be remanded for holding inquiry denovo in the event the disciplinary authority is having reason to believe that the inquiry already conducted has been laconic in some respect or the other. The disciplinary authority by order dated 1.10.2002 ordered for holding inquiry denovo on the count that the presenting officer failed to produce witnesses and the documents and the documents were exhibited by the inquiry officer. Precisely the Court

> in present case is required to see as to whether failure on part of prosecution to produce certain witnesses and documents could be held a lacunae in inquiry. In an inquiry prosecution and delinquent are two parties before the inquiry officer who is required to act in just and fair manner with all impartiality. The sole object of the inquiry officer is to make a prob with regard to charges alleged by giving fair opportunity to prove the charges and also to the delinquent to defend himself. If the prosecution or its presenting officer fails to produce sufficient evidence oral or documentary, it cannot be said a lacunae in inquiry. The failure on part of the prosecution to prove charges does not make the inquiry proceedings laconic. An inquiry could be held laconic if it is in violation of mandatory provisions of the Rules of 1958, if it is in violation of principles of natural justice, if the findings of the inquiry officer are not supported by the reasons or any act of the prosecution or the inquiry officer had effected rights of the delinquent prejudicially."

In reply to the writ petition it is contended by the respondents that quite serious allegations were levelled against the petitioner but the inquiry officer failed to examine certain important witnesses and as such the inquiry is laconic and, therefore, the disciplinary authority rightly ordered to hold inquiry 'de-novo'.

Heard counsel for the parties.

It is true that the allegations levelled against the petitioner are quite serious, however, the disciplinary authority irrespective of severity of the charges is always required to act in accordance with law. The inquiry officer in the instant matter submitted inquiry report on basis of evidence available on record. If any evidence was not produced before the inquiry officer by the prosecution or its presenting officer, it cannot be held that the inquiry was laconic. The disciplinary authority ordered to hold 'de-novo' inquiry solely for the reason that some of the witnesses who were examined during preliminary inquiry were not produced before the inquiry officer. This cannot be a reason to hold the inquiry laconic. The presenting officer should have produced the entire evidence available before the inquiry officer. If he failed to discharge his duties then it cannot be said that the inquiry is laconic. In view of Rule 16(9) of the Rules of 1958 the case can be remanded for holding inquiry 'de-novo' in the event disciplinary authority have reason to believe that the inquiry already conducted has been laconic in some respect or the other. In the instant matter no such reason is available with the disciplinary authority. As such the order impugned dated 4.5.2004 is illegal and the same deserves to be quashed.

Accordingly, this petition for writ is allowed. The order dated 4.5.2004 is quashed.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.